

ESTTA Tracking number: **ESTTA862451**

Filing date: **12/04/2017**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91233690
Party	Defendant Rusty Ralph Lemorande
Correspondence Address	RUSTY RALPH LEMORANDE 1245 N CRESCENT HTS BLVD #B LOS ANGELES, CA 90046 UNITED STATES Email: lemorande@gmail.com
Submission	Other Motions/Papers
Filer's Name	Rusty Ralph Lemorande
Filer's email	lemorande@gmail.com
Signature	/Rusty Ralph Lemorande/
Date	12/04/2017
Attachments	SEND ESTTA. Motion to Allow more time for Depositions.pdf(413043 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

Serial No: 87090468

Publication date: 11/29/2016

Opposition Number: 91233690

For the Mark: NIGHT OF THE LIVING DEAD:

Rusty Lemorande <i>in pro per</i>)
)
Petitioner,)
)
v.)
)
IMAGE 10, INC.)
)
Respondent.)
)

PETITIONER’S MOTION TO ALLOW TIME FOR DEPOSITIONS

Pursuant to Rule 37 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice (37 C.F.R. § 2.120), Petitioner Rusty Lemorande, (“**Lemorande**”), hereby moves the Board for an Order suspending the time for Discovery, and allowing Petitioner to conduct oral depositions with IMAGE 10, INC. (“**Image 10**”) and its designated parties

A. BACKGROUND

In support of this motion, Lemorande states as follows:

Due to the lack of response to Petitioner’s prior discovery requests, and the recent non-responses from Respondent, it's been impossible for Petitioner to determine whether he needs to depose the witnesses identified by Respondent.

Petitioner had hoped that meaningful responses to discovery requests would help determine whether depositions were necessary, or if the Opposition proceeding needs to be continued.

Given Image 10's lack of meaningful responses to date, depositions now appear to be a crucial source of discovery information. Therefore, in the absence of such responses, it seems Petitioner is left with no other choice than to make this petition and request of the Board.

Petitioner has found it difficult to discern the merits of Opposers's arguments in support of its opposition in the above matter. Due to the failure to adequately respond to Petitioner's Request for the **Production of Documents, Requests to Admit and First Set of Interrogatories**, Petitioner has not been able to assess information that might be sought in a deposition, prepare such deposition, or even to deduce whether deposition testimony is necessary.

As a result of Respondent's silence and failure to meet and confer, Petitioner has already filed motions to compel discovery Requests for the Production of Documents, responses to the First Set of Interrogatories, and responses to the Requests to Admit.

Petitioner has also sent a notice of deposition to the Opposer by email (Exhibit A) to which Opposer promptly responded (Exhibit B), not objecting to the deposition but only to the dates proposed, and requesting the deposition to occur in Pennsylvania to which Petitioner had already agreed. (Exhibit B)

Therefore, Petitioner respectfully requests that the Board extend the time allowed for Deposition discovery so that this important act of deposition discovery can occur, preserving Petitioner's right to depose the Opposer's witnesses in this matter, and ensuring complete and

fair adjudication of Respondent's Opposition.

Therefore, Petitioner files this request for a continuance of time so that depositions may be conducted before the discovery period expires,.

CONCLUSION

For the forgoing reasons, Lemorande respectfully requests that the Board enter an order suspending the conclusion of Discovery to allow Petitioner to conduction depositions of the parties described and designated by Opposer.

Dated: December 4, 2017,

Respectfully submitted,

Rusty Lemorande
In Pro Per
1245 North Crescent Heights
Blvd.
Los Angeles, CA 90046
Telephone: (786) 600-4655

/Rusty Lemorande/
Rusty Lemorande.
In Pro Per

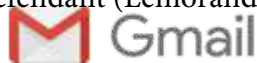
CERTIFICATE OF SERVICE AND FILING

I hereby certify that a copy of the foregoing PETITIONER'S MOTION TO COMPEL DISCOVERY was served on counsel for Image 10 LLC by e-mailing said copy, as agreed by counsel, on December 4, 2017, to the following email address: Meeks, Michael L. at mmeeks@buchalter.com, Bhatti, Farah P. at fbhatti@buchalter.com, and hblan@buchalter.com

/Rusty Lemorande/
Rusty Lemorande

Serial No: 87090468
Opposition Number: 91233690
Defendant (Lemorande's)
Exhibit

EXHIBIT A



Rusty Lemorande <lemorande@gmail.com>

NOTICE OF DEPOSITIONS

Rusty Lemorande <lemorande@gmail.com>

Mon, Dec 4, 2017 at 11:46 AM

To: "Bhatti, Farah P." <fbhatti@buchalter.com>, "Meeks, Michael L." <mmeeks@buchalter.com>, "Blan, Henry" <hblan@buchalter.com>

Hello:

I would like to depose your party, **Image 10, John Russo and Russ Steiner** (by oral questions) subsequent to December 15th and prior to December 25th.

Generally, the date and time within these parameters can be whatever is convenient for your clients (and subject, of course, to my schedule which I will keep reasonably open).

I assume it would need to occur where your party resides, however, Los Angeles is acceptable to me.

This request includes John Russo and Russ Steiner, and any representative of Image 10 that can speak for the entity.

The matters for examination are those which pertain to the First Set of Interrogatories and Requests for Admission already served. Those documents described in the Request for Production of Documents, and any other documents and tangible items relevant to the Interrogatories and Requests for Admission will be required, as per Rule 34.

I believe this request is timely, especially given the pending Motions to Compel (including the Motion to Compel Requests for Admission, which will be filed today). Please advise today if you disagree.

No waivers of any kind should be construed from the above. I reserve all my rights at law and in equity.

Sincerely,

R Lemorande

--

RH Lemorande
P.O. Box 46771
LA, CA 90046
tel: [323 309 6146](tel:3233096146)

Serial No: 87090468
Opposition Number: 91233690
Defendant (Lemorande's)
Exhibit

EXHIBIT B



Rusty Lemorande <lemorande@gmail.com>

NOTICE OF DEPOSITIONS

Meeks, Michael L. <mmeeks@buchalter.com>

Mon, Dec 4, 2017 at 11:51 AM

To: Rusty Lemorande <lemorande@gmail.com>, "Bhatti, Farah P." <fbhatti@buchalter.com>, "Blan, Henry" <hblan@buchalter.com>

Hi Rusty:

Standard procedure for the TTAB is to issue a notice of stay pending hearing on a motion. I believe we will receive on shortly so that depositions will be delayed.

We will confirm available dates for our client's deposition. However, I am not available during the time period you are requesting. Any deposition will have to take place in Pennsylvania at a location appropriate for the witnesses under the TTAB rules.

Regards,

Michael Meeks

Buchalter

A Professional Corporation

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Email: mmeeks@Buchalter.com | www.buchalter.com | [Bio](#)

From: Rusty Lemorande [mailto:lemorande@gmail.com]

Sent: Monday, December 04, 2017 11:47 AM

To: Bhatti, Farah P.; Meeks, Michael L.; Blan, Henry

Subject: NOTICE OF DEPOSITIONS

[Quoted text hidden]

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